

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SAM BIRD, JUDGE

DIVISION I

CA06-850

MARCH 14, 2007

ADIRINE VALENZUELA

APPELLANT

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. JJN03-2036]

V.

HON. RITA W. GRUBER, JUDGE

ARKANSAS DEPARTMENT OF
HEALTH AND HUMAN SERVICES

APPELLEE

AFFIRMED

This appeal arises from an order of the Pulaski County Circuit Court terminating the parental rights of appellant Adirine Valenzuela to her four minor children: C.V., J.V., P.V., and S.V. Appellant's sole point on appeal is that the termination of her parental rights without proper service was a violation of her right to procedural due process. The Department of Health and Human Services (DHHS) responds, arguing that service on appellant was proper and appellant was not deprived of her right to due process. The children's attorney ad litem adds that appellant's argument was not preserved because she failed to raise the question of improper service and obtain a ruling from the circuit court. We agree that appellant's argument was not preserved for our review and affirm.

DHHS brought the Valenzuela children into emergency custody on January 21, 2005, after receiving a call that appellant had been arrested and placed in jail that day and that there was not a suitable caregiver at home. On January 28, 2005, the circuit court held a probable cause hearing at which appellant was present. She testified that she lived with her mother, Grace Napier, and her brother at 4923 Francis Street in North Little Rock. The circuit court found that there was probable cause that the emergency conditions necessitating removal of the children from appellant's home continued and ordered that they remain in the custody of DHHS. The court set reunification as the goal of the case and ordered, among other things, that appellant submit to a psychological evaluation and a drug and alcohol assessment; complete a set of parenting classes; and keep DHHS informed of her address, telephone number, and employment and report any changes within forty-eight hours. The court also authorized weekly visitation at DHHS or Ms. Napier's home. Finally, the court issued appellant an Order to Appear at the adjudication hearing scheduled for March 16, 2005.

Appellant did not appear for the adjudication hearing on March 16, 2005, and the court made a finding that she did not have a legitimate reason for not appearing. Appellant's caseworker, Ms. Hervey, testified that appellant told her that she might be absent for a medical reason, but appellant never confirmed this with Ms. Hervey. At the hearing, the court made the following findings: appellant did not properly notify the court of her alleged medical condition, there was an outstanding no-bond warrant on a drug charge for appellant, and she had not been visiting the children.

Appellant also did not appear at a review hearing held on September 7, 2005. Ms. Hervey testified that the last time she had spoken with appellant was when she visited appellant in jail on August 25, 2005. Ms. Hervey testified that she notified appellant of the review hearing. Appellant was released from jail on August 28, 2005, but did not provide Ms. Hervey with an address, phone number, or any contact information upon her release as Ms. Hervey had requested and as the court had ordered. The court scheduled a permanency-planning hearing for January 11, 2006, and appointed an attorney for appellant.

Although a warning order was issued and published to appellant and a notice of hearing was mailed to appellant's last known address, she again failed to appear at the permanency-planning hearing on January 11, 2006. Appellant's court-appointed attorney advised the court that she had not had any contact with appellant but stated that Ms. Hervey said that appellant's mother, Ms. Napier, told her that she thought appellant was in California. The court changed the goal from reunification to termination of parental rights and ordered DHHS to issue and publish a warning order to both parents.

On March 6, 2006, at a hearing to take up the termination-of-parental-rights report, the court noted that a warning order had been published but ordered DHHS to republish it because it was incorrect. At this hearing, DHHS's attorney informed the court that, according to Ms. Napier, appellant was in jail in California.

At the termination hearing on April 3, 2006, the court noted that another warning order to appellant and the children's father had been issued and published. The court made a finding that there was a failure to appear by both parents "unless there is something either

one of the attorneys would like to report to the Court today?” Appellant’s attorney responded: “Your Honor, I would only report that I sent mail and tried to make telephone contact through the Francis Street address which I was provided by the Court and I understand that it is a grandmother’s address and I haven’t heard from or met this client.” The court entered an order terminating parental rights and changed the goal of the case to adoption. Appellant filed a notice of appeal on May 2, 2006.

Appellant’s sole point on appeal is that her right to procedural due process was violated by DHHS’s failure to effect proper service on her as required by law. She argues specifically that she did not receive actual notice of the termination hearing and that constructive notice was improperly delivered. She claims that Arkansas Code Annotated § 9-27-312 requires the petition and notice of hearing in termination-of-parental-rights cases to be served in the manner provided by the Arkansas Rules of Civil Procedure. She argues that Rule 4(f)(1) of the Arkansas Rules of Civil Procedure allows service through publication of a warning order only when the whereabouts of a defendant remains unknown “after diligent inquiry” and that, in this case, DHHS did not make a diligent inquiry. She claims that DHHS was on notice through Ms. Napier that appellant was incarcerated in California, yet DHHS made no effort to find her. She asserts that *Mayberry v. Flowers*, 347 Ark. 476, 65 S.W.3d 418 (2002), holds that due process requires, at a minimum, notice reasonably calculated to afford a natural parent the opportunity to be heard prior to terminating his or her parental rights. She argues that a warning order did not constitute sufficient notice in this case.

Because appellant's argument was not preserved, we affirm. Although the circuit court began the termination hearing by stating that a warning order had been issued and published and asked appellant's attorney if she had anything to report, appellant's attorney did not object to or request a ruling on the issue of service. Appellant, through her court-appointed attorney, failed to raise the question of improper service and obtain a ruling from the circuit court. *See Madden v. Aldrich*, 346 Ark. 405, 58 S.W.3d 342 (2001) (holding that the failure to obtain a ruling from the trial court is a procedural bar to consideration of the issue on appeal); *see also Moore v. Ark. Dep't of Human Servs.*, 95 Ark. App. 138, ___ S.W.3d ___ (2006) (refusing to review due-process argument with regard to notice where not raised in trial court).

Affirmed.

PITTMAN, C.J., and HART, J., agree.